Substance of 08/12/2008 Phone Interview

In preparation for the Phone Interview that was held on 08/12/2008, the first named inventory, herein after referred to as the "Applicant," sent the Examiner a fax outlining the topics that he intended to discuss during the interview. The interview, which included both the Examiner referenced above and Rachel Porter, another primary Examiner, followed the course of the discussion topics as described in the fax, a copy of which follows.

Invention

The Applicant first attempted to make certain that the Examiners understood the nature of the invention by referring to the Drawings and the Specification and highlighting the key differences between a traditional insurance contract and the business processes used to effectuate and fulfill such contracts and the business process for the present invention. The Applicant explained that Secondary Loss Expense Coverage was not the same as traditional forms of insurance for the following reasons.

a. As described in the Specification on pages 3 and 4, Secondary Loss Expense Coverage covers losses that are "collateral" to those losses covered by traditional insurance. These damages are too difficult to define, prove, or measure or too subject to judgment to be covered by traditional insurance. As a result, a substantial portion of the economic damages from insured loss events are not currently covered, even when they are considered to be fully insured from the perspective of traditional insurance.

b. As shown in **Fig. 1** of the Specification, an insurance contract must be in existence or Secondary Loss Expense Coverage cannot work. Traditional insurance contracts do not depend on the existence of other insurance contracts.

c. This form of loss coverage requires two functional relationships with an existing insurance policy. The premiums for Secondary Loss Expense Coverage are a mathematical function of the premiums of an existing insurance policy. The payments from Secondary Loss Expense Coverage are a mathematical function of the payments made under the same referenced insurance policy.

d. A traditional insurance policy provides an extensive description of what is covered, under what circumstances the coverage applies, and the extent to which it applies. Secondary Loss Expense Coverage merely states that an amount will be paid based on a mathematical function of the amount that is paid by a specified insurance policy.

e. A traditional insurance policy's premiums are described as some unit of currency that is determined based on experience and judgment. Secondary Loss Expense Coverage premiums are set based on a mathematical function of the premiums charged for the specified insurance policy that is referenced.

f. Secondary Loss Expense Coverage can be thought of as a derivative of an insurance policy. This feature enables this coverage to be provided in the form of an insurance policy or some other type of contract.

Prior Art

The Examiners asked if Secondary Loss Expense Coverage was not merely "supplemental" insurance coverage. The Applicant responded that it would be classified as a new form of supplemental insurance coverage that uses and entirely different method than traditional forms of primary or supplemental insurance.

The Applicant pointed out that the prior art cited in the Office Action was non-analogous to the present invention. The arguments why it is non-analogous were detailed in the accompanying fax document that was sent to the Examiner in advance of the meeting.

The Examiners asked if Secondary Loss Expense Coverage was not the same as "stop loss coverage" or effectively the same as a company that purchases more than one layer of coverage under an insurance policy. The Applicant responded that the purpose of these coverage types is different in that they do not cover "collateral losses" and that the business methods necessary to produce this coverage are different as well.

"Stop loss" coverage is a form of reinsurance contract not an insurance contract. As such it is a way of transferring the risk of loss that a company has assumed via insurance or reinsurance contracts to someone else. Also, it is distinguished from the present business method in that it does not protect against "collateral losses" and the premium determination and payout mechanisms are different. These differences would apply to other forms of "excess of loss" reinsurance, too.

Buying another layer of insurance coverage is common in the insurance industry but it is also distinguished from the present invention for these same reasons. "Collateral losses" are not covered by a higher layer of insurance, the premium is not set based on a mathematical function of the premiums charged for the primary layer, and the payout is not determined based on a mathematical function of the losses paid by the primary insurance layer.

35 USC §101

Although the Office Action did not mention it, the Supervisory Examiner wondered if the invention met the requirements of 35 USC §101. The Applicant responded that the present invention was infeasible without the use of information systems and that the very nature of the invention is its ability to generate a useful, tangible, and expected result, which in this

case is determining a reasonable amount of premiums for the "collateral loss" payments that will be made under the contract.

Nevertheless, that does not mean that one would compute the same exact premium or loss payout every time the invention is used. If the inputs to this business method are different, one would expect to generate a different output. If the inputs are the same, one would expect to produce the same output.

The Applicant suggested that the claimed invention was analogous to a paint mixing machine, where one could get an infinite variety of outputs based on the selection of the input control settings. However, the point of using the machine is to be able to set the controls so that one can generate a predictable output. The present application clearly specifies what all of the inputs are to make the claimed invention operable and to enable anyone skilled in the art to use it to generate predictable loss payouts that are reasonable and acceptable, to both a buyer and a seller, in terms of the premiums that are paid for the contract.

The Applicant indicated that producing a consistent and tangible result (premiums and loss payouts) would be obvious to anyone who is knowledgeable in the field of insurance and that he would provide expert testimony to this effect in his official response to the Office Action.

The Meaning of "Function"

The Examiners also questioned if it was clear what the claims meant by the word "function." The Applicant explained that this word was used in a mathematical context which was clear from reading the description of the invention included in the specification on pages 11 – 14. The Applicant indicated that this would be obvious to one skilled in the art and that he would provide expert testimony to this effect in his official response to the Office Action.